

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Jail Appeal No. D-129 of 2022
&
Confirmation Case No. D-12 of 2022

BEFORE:

Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain Shahani, J.

Appellants : 1) Altaf S/o Mumtaz, Marri
2) Adam S/o Meenhon, Marri
3) Javed S/o Begoo, Marri
Through Mr. Nadeem Ahmed Malik, Advocate

The State : *Through Mr. Aftab Ahmed Shar, Addl. P.G*

Date of Hearing : 13.01.2026

Date of Judgment : 16.01.2026

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.- The present Criminal Jail Appeal has been instituted by the appellants named above, challenging their conviction and sentence of death awarded by the learned 4th Additional Sessions Judge (Hudood) Sukkur vide judgment dated 5th November, 2022 passed in Sessions Case No.199/2009 arising out of Crime No.20/2009, for offences under Sections 302, 147, 148, and 149 PPC, registered at Police Station Ahmedpur, District Khairpur. The trial court had convicted the appellants for the offence of Qatl-i-amd and sentenced each of them to death as Tazir under Section 302 (b) read with Section 149 PPC with the direction that they be hanged by the neck separately till dead, subject to confirmation by this Court, and further directed them to pay compensation of Rs.200,000/ each, to the legal heirs of the deceased in pursuance of Section 544-A of the Code of Criminal Procedure, 1898, with the stipulation that in case of failure to pay the said compensation, they would undergo simple imprisonment for a further period of six years. Additionally, they were sentenced to pay a fine of Rs.50,000/ each, for offence under Section 148 PPC, or in default thereof, to undergo simple imprisonment for a further period of six months.

2. The genesis of the present case traces back to 9th February, 2009 when, according to the prosecution's case as set forth in the FIR lodged by the complainant Haji Nawaz Ali at Police Station Ahmedpur, a tragic incident occurred at 2:30 in the afternoon at the Pir Qabil bus stop situated on the Lahan Wah link road. The complainant alleged that on the said date, he along with his son Abdul Waheed, and two eye-witnesses namely Noor Muhammad and Naseeb Ahmed, were returning to their village after completing some work at the village of Taj Muhammad Punjabi. As they reached near the Pir Qabil bus stop, they were intercepted by six identified accused persons namely Khandoo alias Khawand Bux, Mithal son of Adam, Zanwar alias Bagri son of Beggo, Adam son of Meenhoon, Javed son of Begoo, and Altaf son of Mumtaz, along with an unknown accused person whose face was not covered, all belonging to the Marri caste and all being armed with Kalashnikov rifles. The prosecution alleged that these accused persons, having formed an unlawful assembly with the common object of committing murder and in prosecution of their said common object, committed rioting being armed with deadly weapons, and in furtherance of their unlawful intent, all of them indiscriminately opened fire upon Abdul Waheed in the presence and hearing of the complainant and the eye-witnesses. As a result of the said firing, Abdul Waheed sustained multiple firearm injuries on various parts of his body and succumbed to his injuries at the spot. The motive for the commission of this heinous offence, as alleged by the prosecution, was a controversy that had arisen between the parties regarding the use and rotation of irrigation water about two to three days prior to the incident, during which exchange of harsh words had taken place between the complainant party and the accused persons, particularly with Khandoo Marri, which had caused resentment and animosity leading to the fatal occurrence.

3. After usual investigation report was submitted against the accused. The case was initially tried by the learned 2nd Additional Sessions Judge Khairpur, who convicted the accused Altaf, Adam, Javed, and Khandoo and sentenced them to life imprisonment vide judgment dated 10th August, 2016. The appellants being aggrieved filed Criminal Jail Appeal No.S-146/2016. This Court vide judgment dated 21st March, 2022 set aside the judgment and remanded the case to the trial court with directions for re-examination of the complainant and eye-witnesses, and recording of fresh statements of the accused under Section 342 Cr.P.C. The remanded case was received by the learned 4th Additional Sessions Judge (Hudood) Sukkur on 12th September, 2022. However, during the pendency of the remanded proceedings, the complainant Haji Nawaz Ali expired, and consequently, the court declared him a deceased witness. The learned trial court thereafter re-recorded the evidence of eye-witnesses Noor Muhammad on 13th October, 2022 and Naseeb Ahmed on 4th November 2022. The appellants in their statements u/s 342 Cr.P.C. reiterated their denial of the charges, and the learned trial court, after fresh examination of the evidence, passed a judgment dated 5th November, 2022 sentencing the appellants to death instead of the earlier life imprisonment.

4. The learned advocate for the appellants submitted that the appellants are innocent and have been falsely involved in the present case. He contended that the FIR is unreliable and lacks credibility, particularly since the original complainant has expired during the pendency of the case. He further submitted that while seven accused persons are alleged to have opened fire upon the deceased, the medical evidence establishes that the deceased sustained only four entry wounds, which creates uncertainty and ambiguity as to which of the accused persons actually fired the fatal shots that caused the death of the deceased. He submitted that this

uncertainty constitutes a significant mitigating circumstance warranting reduction of the death sentence. He further submitted that the appellants have already undergone about seventeen years of continuous incarceration, which far exceeds any reasonable period and should be considered as a substantial mitigating circumstance in their favor. He emphasized that the appellants have no previous criminal record, the incident arose out of a civil dispute regarding irrigation water which unfortunately escalated into a tragedy, and that keeping them in custody any further and executing them would be against the principles of justice and the spirit of the law

5. The learned Additional Prosecutor General for Sindh, while assisting the Court on behalf of the appellants (who were without counsel), submitted that this case spans more than seventeen years from the date of the incident in February 2009 to the present date. He submitted that while the prosecution case alleges the involvement of seven accused persons who allegedly opened fire, the medical evidence establishes that the deceased sustained only four entry wounds. This creates uncertainty as to which of the seven accused persons actually fired the fatal shots that caused the death of the deceased. He submitted that this uncertainty constitutes a significant mitigating circumstance warranting a lenient view. He further submitted that the appellants have already undergone about seventeen years of continuous incarceration, which has exceeded or is approaching the threshold of fifteen years prescribed under Rule 217 of the Pakistan Prison Rules, which establishes that a life convict must serve a minimum of fifteen years of actual imprisonment. The learned Additional Prosecutor General emphasized that the appellants have no previous criminal record, are not hardened criminals, and that the incident arose out of a civil dispute regarding irrigation water rather than from any premeditated plan to commit murder.

6. Heard the parties and perused the record. The record shows that prosecution has succeeded in proving the occurrence of the incident and the involvement of the appellants in the commission of the offence beyond reasonable doubt. The eye-witnesses Noor Muhammad and Naseeb Ahmed have consistently supported the prosecution case and have deposed regarding the occurrence of the incident and the manner in which the deceased was gunned down by the accused persons. The medical evidence corroborates the ocular evidence and establishes that the deceased died due to firearm injuries. The conviction of the appellants recorded by the learned trial court for offences under Sections 302 and 148 read with Section 149 of the Pakistan Penal Code is therefore sustainable and is hereby maintained.

7. However, the crucial question that arises for determination in the present case relates to the quantum of sentence to be awarded to the appellants. Section 302 (b) PPC provides that whoever commits *Qatl-i-amd* shall, subject to the provisions of the said section, be punished with death or imprisonment for life as *Tazir*. The said provision confers upon the Court a discretion to award either death or imprisonment for life depending upon the facts and circumstances of each case. While death is the normal sentence for the offence of murder, the Courts have consistently held that the death penalty should be reserved for the "most serious crimes" and should be imposed only in cases where there are aggravating circumstances and no mitigating circumstances are present. In the present case, we observed that there exist significant and compelling mitigating circumstances which warrant the exercise of leniency in favor of the appellants and which militate against the confirmation of the death sentence. The first and foremost mitigating circumstance that weighs heavily with this Court is the fact that while the prosecution case alleges the involvement of seven accused persons who allegedly opened fire upon the deceased, the medical evidence

establishes that the deceased sustained only four entry wounds caused by firearm injuries. This creates an element of uncertainty and ambiguity regarding the extent of participation of each individual accused in the actual commission of the offence. It cannot be determined with certainty as to which of the accused persons actually fired the shots that caused the entry wounds, and consequently, as to which of the accused fired the fatal shots that resulted in the death of the deceased. This uncertainty and ambiguity has been consistently recognized by the Superior Courts as a significant mitigating circumstance warranting reduction of the death sentence to imprisonment for life.

8. The Honourable Supreme Court of Pakistan in the case of *Ghulam Rasool v. the State* (2025 SCMR 74) was pleased to hold that where it remains uncertain how many shots were fired by each of the assailants and it is unclear whose shot caused the deaths of the victims, such uncertainty constitutes a mitigating circumstance warranting alteration of the death sentence to life imprisonment. Similarly, in the case of *Muhammad Yaseen v. the State* (2024 SCMR 128), the Honourable Supreme Court held that in the absence of pre-meditation to commit murder where motive is not proved by the prosecution, the same may be considered as a mitigating factor in order to reduce the quantum of sentence in cases involving capital punishment, and that if motive is not alleged or is not proved, normally the sentence of death is converted into imprisonment for life. In the present case, the uncertainty regarding which of the seven accused persons fired the fatal shots that caused the death of the deceased constitutes a significant mitigating circumstance which weighs heavily in favor of the appellants.

9. The second significant mitigating circumstance that weighs with this Court is the fact that the appellants have already undergone a very substantial and prolonged period of incarceration extending over seventeen

years from the date of the incident in February 2009 to the present date in January 2026. The principle that long incarceration can be considered as a mitigating circumstance warranting reduction of sentence has been recognized and applied by the Superior Courts in several cases. In the case of *Ghulam Rasool v. the State* (2025 SCMR 74), the Honourable Supreme Court observed that the total period of detention of the appellant in prison was about 18 years without earning a single day of remission because of awarding death sentence, and that if remissions are counted towards his sentence, the appellant has served almost an imprisonment for life. The Honourable Supreme Court further observed that after serving a sentence for life including eleven years detention in death cell, executing his death penalty at this stage would not only be harsh but would also be contrary to the principle of life expectancy.

10. In the present case, the appellants have been in continuous custody since their arrest in the year 2009, which amounts to a period of about seventeen years, and during this long period they have been deprived of their liberty, have been separated from their families, have suffered the rigors and hardships of prison life, and have had ample opportunity for introspection, repentance, and reformation. The learned Additional Prosecutor General has fairly conceded that the appellants have undergone sufficient incarceration and their continued detention to face the extreme penalty of death would not serve any useful purpose. This Court is of the view that the long period of incarceration undergone by the appellants constitutes a significant mitigating circumstance which militates strongly in favor of the conversion of the death sentence to imprisonment for life.

11. This Court further finds it relevant and appropriate to refer to Rule 217 of the Pakistan Prison Rules which provides a significant safeguard in the matter of life imprisonment. Rule 217 (ii) of the Pakistan Prison Rules

provides that remission, both ordinary and special, earned by a lifer convict shall be so much that a sentence of imprisonment for life is not shortened to a period of imprisonment less than fifteen years. This Rule establishes that the minimum period of actual imprisonment that must be undergone by a life convict is fifteen years, and that remissions cannot have the effect of reducing the period of actual custody below this threshold. The legislative intent underlying this Rule is to ensure that life convicts undergo a substantial period of incarceration which serves the twin objectives of retribution and reformation, and that premature release of life convicts is prevented.

12. The Honourable Supreme Court of Pakistan in the case of *Nazar Hussain v. The State* (PLD 2010 SC 1021) held that a life convict must serve a minimum of fifteen years of actual custody, that remissions cannot reduce the sentence below fifteen years, and that any release before fifteen years is unlawful. Similarly, in Wali Khan's case, the Honourable Supreme Court reaffirmed the fifteen-year minimum requirement and held that neither the Prison Rules nor any executive notification can authorize a reduction below fifteen years. In the case of *Tahir Mehmood* (2018 SCMR 169), the Honourable Supreme Court set aside the conviction under the Anti-Terrorism Act but maintained the conviction under Section 302(b) of the Pakistan Penal Code and gave the benefit of Section 382-B of the Code of Criminal Procedure, recognizing that after completing fifteen years, the life sentence considerations applied.

13. In the present case, the appellants have already undergone a period of incarceration approaching or exceeding the threshold of fifteen years prescribed under Rule 217 of the Pakistan Prison Rules. This fact assumes great significance in the context of the determination of the appropriate sentence to be awarded to the appellants. The prolonged incarceration already undergone by the appellants, when viewed in

conjunction with the other mitigating circumstances present in the case, particularly the uncertainty regarding which accused fired the fatal shots, provides a strong basis for converting the death sentence to imprisonment for life. The appellants, having already undergone nearly fifteen years or more of incarceration, have suffered substantial punishment, and have had ample opportunity for reformation and rehabilitation. Confirming the death sentence at this stage, after such prolonged incarceration, would be harsh and disproportionate, particularly in view of the mitigating circumstances present in the case.

14. This Court also takes into consideration the fact that the incident arose out of a civil dispute regarding irrigation water which unfortunately escalated into a tragic occurrence. While this does not in any manner justify or excuse the commission of the offence, it does provide a context for understanding the circumstances under which the offence was committed and demonstrates that this was not a case of cold-blooded, premeditated murder but rather a case where a civil dispute unfortunately took a violent turn leading to the loss of a precious human life. The appellants have no previous criminal record, they are not hardened criminals, and they do not pose any danger to society. The principle of *Fasad-fil-arz* as provided in Section 311 of the Pakistan Penal Code is not attracted in the present case as there are no circumstances indicating that the appellants have any previous conviction, that they are potential danger to the community, that the offence has been committed in a brutal or shocking manner which is outrageous to the public conscience, or that the appellants are hardened criminals.

15. This Court is also conscious of the fact that the original complainant Haji Nawaz Ali, who had lodged the First Information Report and had been pursuing the case with great determination, has expired during the pendency of the second round of trial. The mother of the deceased Abdul

Waheed had also expired shortly after the incident due to shock and trauma caused by the tragic death of her son. One of the co-accused Khandoo alias Khawand Bux has also expired during the pendency of the remanded proceedings. These deaths have brought about a fundamental change in the circumstances and complexion of the case.

16. It is important to emphasize and clarify that in the present case, there is no question of any compromise between the parties and no compromise has been effected. The legal heirs of the deceased have not waived their right of *Qisas*, nor have they entered into any compound or settlement with the appellants under Section 345 of the Code of Criminal Procedure or Section 309 or 310 of the Pakistan Penal Code. The request of learned Addl. P.G is limited to the alteration of the quantum of sentence from death to life imprisonment in view of the mitigating circumstances present in the case. We are therefore, not proceeding on the basis of any waiver of *Qisas* or compromise, but by exercising judicial discretion under Section 302(b) of the Pakistan Penal Code to award the lesser punishment of imprisonment for life instead of death in view of the significant and compelling mitigating circumstances discussed above.

17. In view of the detailed discussion and analysis set forth above, we have arrived at the firm and considered conclusion that the present case eminently calls for the exercise of leniency and compassion in favor of the appellants in the matter of sentence. The uncertainty regarding which of the seven accused persons fired the fatal shots that caused the death of the deceased, the prolonged period of incarceration of about seventeen years already undergone by the appellants, the application of Rule 217 of the Pakistan Prison Rules which provides that a life convict must undergo a minimum of fifteen years of actual imprisonment which threshold the appellants have already reached or exceeded, the fact that the incident arose

out of a civil dispute regarding irrigation water rather than from any premeditated plan or conspiracy to commit murder, the absence of any previous criminal record against the appellants, the fact that the appellants are not hardened criminals and do not pose any danger to society, the absence of any circumstances attracting the principle of *Fasad-fil-arz*, the expiry of the original complainant during the pendency of the second round of trial, no objection recorded by the learned Addl. P.G for modification of the sentence, and the totality of the circumstances as discussed in detail above, all point inexorably towards the conclusion that while the conviction of the appellants must be maintained, the death sentence awarded to them should be converted into imprisonment for life.

18. In the result, and for all the reasons set forth in detail above, the present Criminal Jail Appeal filed by the appellants Altaf, Adam, and Javed is partially allowed to the extent of modification of sentence. The judgment dated 5th November, 2022 passed by the learned 4th Additional Sessions Judge (Hudood) Sukkur, is hereby maintained and upheld. However, the death sentence awarded to the appellants as *Tazir* under Section 302 (b) read with Section 149 of the Pakistan Penal Code is hereby converted and altered into imprisonment for life in view of the mitigating circumstances discussed above. The appellants shall undergo imprisonment for life and shall be entitled to the benefit of Section 382-B of the Code of Criminal Procedure, 1898, whereby the period already undergone by them in custody during the trial and pendency of the appeal shall be set off against the sentence of imprisonment for life.

19. The sentence of fine of Rs.50,000/ each, for offence under Section 148 of the Pakistan Penal Code, or in default thereof, simple imprisonment for a further period of six months, awarded by the learned trial court is hereby maintained. The compensation of Rs.200,000/ each, totaling

Rs. 600,000/ payable to the legal heirs of the deceased in terms of Section 544-A of the Code of Criminal Procedure, and in default thereof, simple imprisonment for a further period of six months instead of six years, awarded by the learned trial court is also hereby maintained.

20. Consequently, the Criminal Confirmation Case is answered in the negative. The death sentence awarded to the appellants by the learned trial court is not confirmed and stands converted into imprisonment for life as observed above.

21. Copy of this judgment shall be sent to the Superintendent of Central Prison and Correctional Facility Sukkur for information and necessary action. The Superintendent is directed to ensure that the appellants are provided with all facilities and benefits available to life convicts under the law and the Prison Rules, including the benefit of earning remissions in accordance with law, subject to the minimum requirement under Rule 217 of the Pakistan Prison Rules that a sentence of imprisonment for life shall not be shortened to a substantial period of imprisonment less than fifteen years.

22. The case against the proclaimed offenders Muhammad Mithal and Zanwar alias Bagri shall remain on dormant file till their arrest or otherwise as per law.

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